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THOUGH ORGANIC ACT SAYS NO

Government Must Bring Action. Kapiolani Estate Sued for \$5000 Damages.

Judge Gear made an important ruling yesterday in his written opinion in the case of J. B. Atherton vs. Wahiawa Sugar Co., Ltd., one which in effect holds that the Organic Act, wherein it limits the holding of any corporation to 1,000 acres of land, does not affect the title of the land, unless through a direct proceeding, instituted by the sovereign, in this case the Government. The ruling has an important bearing on the holdings of the various sugar companies, in that it holds the title to lands in excess of 1,000 acres not void, but voidable, to which the sovereign alone can object.

The court sustains the objections to the answer and orders the portion objected to as scandalous and impertinent expunged. The bill alleged that, April 28, 1899, George Galbraith leased certain land to John Emmelhuth, which the latter assigned to the defendant, February 26, 1900, that on September 27, Galbraith leased the same land to the plaintiff. The defendant failed to pay the rent in October, 1900, which it is alleged constituted a forfeiture of lease, and the plaintiff entered into possession. Defendant refuses to cancel said lease, and sets up as a defense that plaintiff's rights rest as trustee of the Wahiawa Agricultural Co., "an Hawaiian corporation which already holds in excess of 1,000 acres, in contravention of section 55 of the act to provide a government for the Territory of Hawaii."

It was also alleged by defendant that "the said Joseph B. Atherton is not entitled to the aid or assistance in any way of a court of equity in furtherance of such attempted violation of the law. This latter allegation is the one ordered expunged as impertinent and scandalous.

The court upholds plaintiff's contention and holds that his title to the land is good. The exceptions are sustained. In his reference to the alleged violation of Section 55 of the Organic Act, Judge Gear quotes from numerous opinions. "Where a corporation is not allowed to take and hold title to real estate a conveyance to it is not void but merely voidable; the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose. "Defendants' counsel admits that a deed to a corporation of property by which the corporation would own over 1,000 acres of land would not be void, but only voidable and they contend that while the plaintiff in this act may do as he pleases with the land as far as the defendant is concerned, yet the moment he comes into a court of equity to ask the aid of the court, the court will refuse to lend its aid on the ground stated by the well known maxim, 'That he who comes into a court of equity must come with clean hands,' and that the plaintiff having obtained the land by contravention of the terms of the Organic Act, cannot be heard in a court of equity to ask its aid."

It is held that this point is not well taken, in the case at issue, the maxim being only applicable to the transaction with regard to which it is raised, which is not the one involved in the suit.

Mary H. Atcherly has filed suit of ejectment against the Kapiolani Estate, Limited, Panaloke, Kimo, Kallimoane, Kauba Hale, Mrs. Kaluahine Haina, Punahoa, Mahoe, Hugo K. Kawelo, Lewers & Cooke, Limited, and Abigail K. Campbell. The plaintiff complains of the defendants that they have unjustly and contrary to law and the rights of plaintiff taken into their possession and converted to their use and occupation a parcel of land situated at Honoukahu, on Queen street and Punchbowl streets, in Honolulu, containing an area of 2 30-100 acres. Plaintiff claims a title in fee simple to said property by purchase from Moses Kapaakoa, who obtained it by devise from Kinimaka, the original patentee, and claims damages in the sum of \$5,000. The plaintiff asks for the restitution of the property and damages for its retention.

TAX COURT WILL MEET.

Notice has been given by W. L. Wilcox, president of the Court of Tax Appeals for Honolulu, that said board will hold its first session this afternoon at 1:30, in the office of C. Bolte, No. 19 Merchant street.

SUPREME COURT DECISION.

The Supreme Court yesterday handed down a decision in the case of H. K. Kabe vs. Mrs. Anima, Ah Kee and others for ejectment, sustaining the ruling of the Fifth Circuit Court.

The syllabus of the decision was as follows: In an action for ejectment, proof by the plaintiff of a connected chain of title back to the Government is a prima facie showing of title; and, in such case, proof of possession by one of plaintiff's predecessors in interest need not be made in order to defeat a motion for a nonsuit.

The evidence in this case, the defense being that of adverse possession, held sufficient under the instructions given by the trial court, to support a verdict for the plaintiff.

COURT NOTES.

An order was given yesterday to John A. Baker authorizing him to sell a certain piece of land, in the estate of Pili Panawa, deceased.

An inventory was filed yesterday by Jonathan Shaw, guardian of Evelyn Nicholas Bidwell, showing property on hand to the amount of \$7,273.73.

The fees for the jurors that served during the past term have been paid to the

clerk, and they may get their money by calling for it at the office.

A new petition has been filed in the case of Victoria de Souza vs. Honolulu Brewing and Malting Company. A claim of \$300 is made for damages for alleged unlawful acts of defendant.

The libelee has filed a general bill of exceptions in the Nobrega divorce suit, wherein libellant was allowed half of the estate. Exception is also made to the allowance of \$15 alimony per week and of attorney's fees of \$300. An appeal is taken to the Supreme Court.

NAME COURT OFFICIALS.

Republican Committee Choses Clerk and Bailiff

Judge George D. Gear, appointed by President McKinley as second circuit judge, has left to the Republican Central Committee the matter of making appointments in his court. He is entitled to the appointment of a clerk, court interpreter and Grand Jury bailiff, and asked the committee to make recommendations for those offices. The committee at a meeting held Tuesday evening recommended A. G. Kaulukou for the clerkship and Emil Ney as bailiff to the Grand Jury. No appointee was recommended for interpreter. All the members of the committee praised the action of the judge, as being in the interest of organization politics.

PLEADS FOR GOLDEN RULE

Chinese Consul at San Francisco Makes Argument to Christians.

SAN FRANCISCO, July 21.—Ho Yow, Chinese Consul General, transmitted a communication to the National Epworth League Convention yesterday, in reply to the memorial of the Labor Council made a few days ago, on the subject of Chinese exclusion. Ho Yow takes issue with the Labor Council and boldly advocates the abolition of exclusion laws. He says: "We think, by raising the bar against the Chinese and permitting them to come into this country, commerce as well as labor will be greatly benefited thereby." He answers the principal objections of the Labor Council categorically, these objections being that the Chinese work for lower wages than whites; that they send their money to China; that they are uncleanly and bring diseases; that they take work away from American labor, and that if not excluded they will come in such numbers as to swamp the country.

Ho Yow declares that "the Chinese demand higher wages than even the best of the white laboring classes." He says that the custom of sending money to China is a good one, as it makes the people there better able to buy American goods. As to cleanliness, the Chinese Consul General claims that his countrymen here, who are of the laboring class, are as clean as the laboring classes of any nationality. They are not responsible for diseases attributed to them, he says. In regard to conflicting with white labor, he says this is hardly true, as the Chinese do a low class of unskilled manual labor, which competes only with pauper labor from Europe.

The last contention, that the Chinese are likely to swamp this country if not excluded, Ho Yow says is a delusion. He says the Chinese coming here are natives of Kwong Tung, South China, and that none from the other eighteen provinces ever come here or migrate elsewhere, even where not excluded by law. He says the exclusion of Chinese will do no good, while pauper labor from Europe is allowed to come here. Finally he asks the Epworth Leaguers to use their influence to have the Golden Rule exerted in behalf of the Chinese.

REAL ESTATE TRANSACTIONS.

Recorded July 26. No. 376—Julian Wakanika of Honolulu to W. H. Hoogs of Honolulu; conveys R. P. 6229, kul. 7699, 3 apanas, Waihee, Koolauapo, Oahu; Consideration \$850.

No. 375—W. C. Achi and wife of Honolulu to Iona Pheea of Honolulu; conveys lot 87, King street tract, R. P. 5715, L. C. A. 10095, Kewalo, Honolulu, Oahu. Consideration \$1,000.

No. 372—Lum Fie and wife to George Lycurgus, tr., of Honolulu; conveys two pieces land, Kukul and River streets, Honolulu, Oahu. Consideration \$5,000.

No. 362—L. C. Ables and wife of Honolulu to J. E. Overton and wife of Honolulu; conveys lots 12 and 13, R. P. Grant 3137, Makiki, Honolulu, Oahu. Consideration \$3,300.

Recorded July 27. No. 337—J. W. Hiwauli and wife of Waianae, Oahu, to Willie Hiwauli of Waianae, Oahu; conveys ap. 1, R. P. 1053, kul. 3076, Waianae, Oahu. Consideration \$1.

No. 380—W. R. Castle, tr., of Honolulu, to A. N. Campbell of Honolulu; conveys lots 10, 11 and 18, block 5, Kapahulu tract, Walkiki, Kona, Oahu. Consideration \$480.

No. 384. K. K. George, tr., of Honolulu, to George Charman, opio, of Honolulu; conveys interest piece land, Koloa, Kauai, (L. 223, p. 230). Consideration \$1.

No. 378—A. W. Conrad and husband of Honolulu to S. N. Castle Estate of Honolulu; conveys lot 7 of R. P. Grant 3648, Manoa, Kona, Oahu. Consideration \$1,300.

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2 Sewing Machines, 1 Child's High Chair, 3 Oak Rockers, 2 Oak Bedsteads, 1 Oak Bedstead, 1 Box Mattress, 2 Spring Mattresses.

2 Top Mattresses, Many Oak Rockers and Chairs, Many Laquered Trays, Crockery, Glassware, Etc., Etc., Etc.

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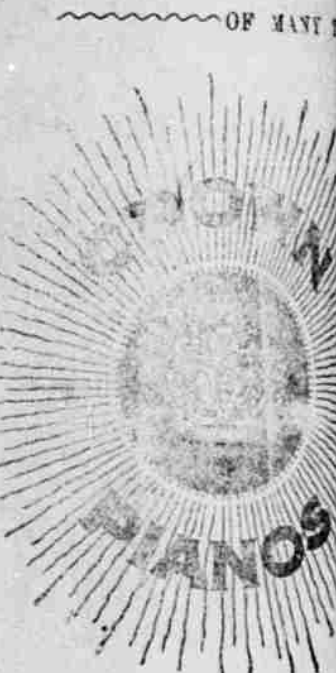
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"A Heart of Flame," by Embree.

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